

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JOHN P. HICKS,	:	
Plaintiff,	:	Case No. 3:08CV056
vs.	:	District Judge Thomas M. Rose
A.G. WAGNER, <i>et al.</i> ,	:	Magistrate Judge Sharon L. Ovington
Defendants.	:	

REPORT AND RECOMMENDATIONS¹

Plaintiff John P. Hicks, an inmate at the Chillicothe Correctional Institution in Chillicothe, Ohio has asserted from the start of this case that he is not a “prisoner” within the meaning of 28 U.S.C. §1915(h), and that as a result, he does not need to submit an application to proceed *in forma pauperis*. The Court previously rejected that assertion and dismissed Plaintiff’s Complaint without prejudice due to his failure to either submit the required *in form pauperis* form or pay the full filing fee. *See* Doc. #s 1, 3, 5, 7.

The case is presently before the Court upon Plaintiff’s Notice of Appeal and Unsworn Declaration, which the Court has construed as a Motion For Leave To Appeal 28 U.S.C. §1915(a)(3). (Doc. #s 10, 11). Plaintiff again asserts that he is not a prisoner based on the same bankruptcy case, *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992), on which he

¹ Attached hereto is a NOTICE regarding objections to this Report and Recommendations.

previously relied in his unsuccessful attempt to establish that he is not a “prisoner” within the meaning of 28 U.S.C. §1915(h). *See* Doc. #s4, 10. Consequently, for the reasons set forth in the Report and Recommendations and the Court’s Entry and Order Overruling Plaintiff’s Objections, Plaintiff’s Motion For Leave to Appeal *In Forma Pauperis* lacks merit.

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff’s Notice of Appeal and Unsworn Declaration, which the Court has construed as a Motion For Leave To Appeal *In Forma Pauperis* (Doc. #10), be DENIED;
2. The Court decline to certify pursuant under 28 U.S.C. § 1915(a) that an appeal of the Court’s Decision and Entry would be taken in good faith; and
3. The case remain terminated on the docket of this Court.

September 8, 2008

s/ Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).